



Privacy & Civil Liberties Oversight Board Freedom of Information Act Reference Guide

May 8, 2013

- I. Introduction. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, provides every person with the right to request access to federal agency records or information. Federal agencies are required to disclose records upon receiving a written request for them, with the exception of records that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court.

This reference guide is designed to familiarize you with the specific procedures for making a FOIA request to the Privacy and Civil Liberties Oversight Board (PCLOB or Board).

- II. Access to certain records without a FOIA request. The PCLOB, like all federal agencies subject to FOIA, makes certain types of records available without a FOIA request through its public reading area at its office in Washington, D.C. 20507. This reading area is available to the public by appointment. The following information is available without a FOIA request:
- A. Final statements of policy and interpretations which have not been published in the *Federal Register*;
 - B. Administrative staff manuals and instructions to staff that affect members of the public;
 - C. Copies of records that have been the subject of a FOIA request and that also are the subject of sufficient public interest or curiosity that the agency believes that other persons are likely to request (or already have requested) them;
 - D. The PCLOB's annual FOIA reports -- which include such information as the number of FOIA requests received by the agency, the amount of time taken to process requests, the total amount of fees collected by the agency, information regarding the backlog of pending requests, and other information about the agency's handling of FOIA requests; and
 - E. Any other records deemed appropriate for public disclosure.¹

¹ The FOIA requires that agencies' FOIA Reference Guides provide an index of their major information systems and a description of major information and record locator systems maintained by the agency. The Board is in its initial start-up phase, including establishing its information systems. This FOIA Reference Guide will be updated as necessary.

The Board will make these documents available on its website, www.pclob.gov, as soon as practicable.

- III. Where to make a FOIA request. The PCLOB is in its early stages of operation and is working diligently to establish a website and e-mail addresses. During our initial start-up period, you should submit your FOIA request to Privacy and Civil Liberties Oversight Board, c/o General Services Administration, Agency Liaison Division, 1275 First Street, NE, ATTN: 849C, Washington, D.C. 20417. Please be sure to include "FOIA Request" on the envelope to assist us with timely processing.

We will update this address and include e-mail and fax numbers as soon as possible.

- IV. How to make a FOIA request. Your FOIA request must be in writing and should be sent to the address provided above.

There is no special form or particular wording for making requests. You should simply state that you are requesting documents under the FOIA and describe the documents you are requesting. In making your request, you should be as specific as possible with regard to names, dates, places, events, subjects, etc. The more specific you are about the records or types of records that you want, the more likely it will be that we will be able to locate those records and that any search charges will be minimized.

A FOIA request can be made for any agency record; however, this does not mean that the Board will disclose any record sought. There are statutory exemptions that authorize the withholding of certain information. The Board will assess the applicability of these exceptions in accordance with the Presidential Memorandum on the Freedom of Information Act (January 21, 2009) and the Attorney General's guidance, *Creating a "New Era of Open Government."*

When the Board withholds information, it will specify which FOIA exemption permits withholding. You should be aware that the FOIA does not require agencies to do research for you, to analyze data, to answer written questions, or to create records in order to respond to a request.

- V. Time for Response. We are required to respond to your FOIA request within 20 business days (excluding Saturdays, Sundays, and legal holidays). This time period does not begin until your request is actually received by the Board. Under the FOIA, an agency is not required to send the releasable documents to you by the twentieth business day; it may send you a letter informing you of its decision and then send you the documents within a reasonable time afterward.

The Board may toll (suspend) the time for response once to seek additional information from you about your request and as many times as necessary to clarify fee assessments. In addition, we may extend our response time by an additional ten business days when:

- A. responsive records need to be collected from offices that are separate from our headquarters;
- B. the request involves a "voluminous" amount of records which must be located, compiled, and reviewed; or
- C. the PCLOB must consult with another agency which has a substantial interest in the responsive material.

When an extension is needed for one of these reasons, we will notify you in writing and indicate when a response will be made. If we are not able to respond to your request even with a ten-business day extension, we will notify you of this in writing and offer you the opportunity to modify or limit your request. Alternatively, you may agree to a different timetable for the processing of your request.

At any time, you may contact the Board's FOIA Public Liaison to check on the status of your FOIA request.

- VI. Expedited processing. We may provide your request expedited processing, upon your request and demonstration of a compelling need. Compelling need means that the failure to obtain the records on an expedited basis could pose an imminent threat to the life or physical safety of an individual, or that the requester is primarily engaged in the dissemination of information and there is an urgency to inform the public concerning actual or alleged federal government activity.

Your request for expedited processing must include the reasons why your request should be expedited and must certify that the reasons given for seeking expedited processing of his request are true and correct to the best of your knowledge and belief. We will notify you of our decision whether to grant expedited processing within ten days after receiving your certified request. If we deny your request for expedited processing, you will be advised of your right to submit an administrative appeal, which will be handled expeditiously.

- VII. Fees. There is no initial fee to file a FOIA request; in fact, in the majority of requests, no fees are ever charged. By law, however, an agency is entitled to charge certain fees depending on the particular category of FOIA requester that you fall into. For the purposes of fees only, the FOIA divides requesters into three categories.

- In the first category, *commercial requesters* may be charged fees for searching for records, "processing" the records (i.e., reviewing them to determine the possible applicability of FOIA exemptions), and photocopying them.
- In the second category, *educational or noncommercial scientific institutions and representatives of the news media* are charged for photocopying expenses, after the first one hundred pages of copies.

- Requesters in the third category, i.e., all *other* requesters, are charged for record searches and photocopying -- and there is no charge for the first two hours of search time or the first one hundred pages of photocopies.

The Board currently charges ten cents per page for photocopying. In all cases, if the total fee does not exceed \$20.00 we will not charge any fee at all.

Your request may include a specific statement limiting the amount that you are willing to pay in fees. If you do not do so, we assume that you are willing to pay fees of up to \$25.00. If we estimate that the total fees for processing your request will exceed \$25.00, we will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you continue to want all of the records involved, you will be asked to express your commitment to pay the estimated fees and the processing of your request will be suspended until you agree to do so.

You ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you. If, however, you have failed to pay fees within thirty days of billing in the past, or if the estimated fees exceed \$250, you may be required to pay the estimated fees in advance -- that is, before the records even are processed. If you agree to pay fees and then fail to do so within 30 days of billing, you may be charged interest on your overdue balance and we will not proceed with any further requests from you until payment in full has been made. If you agree to pay fees for searching for records, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located, even if they are withheld as entirely exempt.

VIII. Fee waivers. If you expect or are advised that a fee will be charged, you may request a waiver of those fees. Fee waivers, however, are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard because such disclosures usually will not result in any increase of the public's understanding of government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver.

IX. Initial determinations. Once we process your request and any fee issues have been resolved, our FOIA Officer will send you a written initial determination. Most of the time, the FOIA Officer will include any documents that can be disclosed along with the determination letter, though, on occasion, the documents may be sent within a reasonable time following the letter.

The FOIA provides access to all federal agency records (or portions of those records), except for those withheld under any of nine exemptions or three exclusions. Our initial

determination letter will advise you of whether any information is being withheld pursuant to one or more of the exemptions. When a page of a record is being withheld in its entirety, the FOIA Officer ordinarily specifies the number of pages being withheld or makes a reasonable effort to estimate the volume of the withheld information.

The FOIA's nine exemptions authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential commercial or financial information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

Congress also excluded three narrow categories of law enforcement and national security records from the requirements of the FOIA (referred to as FOIA "exclusions"). The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings. The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed. The third exclusion is limited to the FBI and protects the existence of foreign intelligence, counterintelligence, or international terrorism records when the existence of such records is classified.

- X. Administrative appeals. If you disagree with our initial determination, or you believe that there are additional records responsive to your request that our search did not uncover, you may file an administrative appeal. You also may appeal the denial of a request for expedited processing or a fee waiver. We must receive your appeal within sixty days of the date of our initial determination letter.

All appeals must be made in writing and addressed to:

Chief FOIA Officer
Privacy and Civil Liberties Oversight Board
c/o General Services Administration, Agency Liaison Division
ATTN: 849C
1275 First Street, NE

Washington, D.C. 20417.

The front of the envelope and the appeal letter should contain the notation "Freedom of Information Act Appeal."

There is no specific form or particular language needed to file an administrative appeal. You may explain the reasons for your disagreement with the action, but a simple statement that you are appealing the decision is sufficient. If you are appealing because you believe there are additional records that have not been located in response to your request, you should specify why you think such records exist and, if possible, where you believe they might be located.

The Chief FOIA Officer, in consultation with the General Counsel, will review the initial determination and make an independent determination as to whether your request was properly processed.

Under the FOIA, we must make a determination on your administrative appeal within 20 business days. In unusual circumstances, we may extend the time to respond by an additional ten working days. If this occurs, you will be notified in writing prior to the expiration of the 20 working days. We may also toll (suspend) processing your request to seek additional information or clarifying information about fees. If this occurs, you will be notified in writing prior to the expiration of the 20 working days. The time to respond to your appeal will resume when we receive your response to our request for information.

The Chief FOIA Officer may take one of several actions on your appeal; affirm the decision in full and identify which exemptions have been appropriately claimed; affirm part of the decision (identifying the applicable exemptions), but order the release of other information previously withheld; order the release of all withheld information. Finally, under some circumstances, the Chief FOIA Officer may return or "remand" the request for reprocessing. When a case is remanded, you will have another opportunity to appeal the FOIA Officer's determination to the Chief FOIA Officer if you remain dissatisfied with the FOIA Officer's action.

- XI. Resolving disputes. The Board has a FOIA Public Liaison to whom you may turn if you are dissatisfied with the services received from our FOIA Office. The FOIA Public Liaison can assist you throughout the request process, from working with you and the FOIA Officer to arrange an alternative time frame for processing your request, to increasing understanding regarding the status of your request, to assisting you in resolving disputes.

In addition, the Office of Government Information Services, an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration

Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

Finally, the FOIA provides requesters with the right to challenge an agency's action in federal court. Before doing so, you ordinarily will be required to have first filed an administrative appeal.

Approved by the Board.